

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS
(Phentermine/Fenfluramine/Dexfenfluramine)
PRODUCTS LIABILITY LITIGATION

MDL NO. 1203

SHEILA BROWN, *et al.*,

Plaintiffs,

v.

CIVIL ACTION NO. 99-20593

AMERICAN HOME PRODUCTS
CORPORATION,

Defendant.

PRETRIAL ORDER NO.

AND NOW, this ____ day of _____, 2003, upon consideration of
Wyeth's Motion to Grant As Uncontested Its Motion to Enforce the Settlement
Agreement and Pretrial Order No. 1415 Against Class Member Genevieve Hinkel, it is
hereby ORDERED that said motion is GRANTED for the reasons set forth herein.
Wyeth's Motion to Enforce the Settlement Agreement and Pretrial Order No. 1415
Against Class Member Genevieve Hinkel is GRANTED as unopposed.

BY THE COURT:

Harvey Bartle, III

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v.

CIVIL ACTION NO. 99-20593

AMERICAN HOME PRODUCTS
CORPORATION,

Defendant.

**WYETH'S MOTION TO GRANT AS UNCONTESTED
ITS MOTION TO ENFORCE THE SETTLEMENT AGREEMENT AND PTO
1415 AGAINST CLASS MEMBER GENEVIEVE HINKEL**

On April 23, 2003, Wyeth filed its Motion to Enforce the Settlement Agreement and Pretrial Order No. 1415 Against Class Member Genevieve Hinkel. On July 24, 2003, Wyeth filed a Supplement to its Motion. Although Plaintiff's response to the Motion was due well over three months ago, she has not responded. Moreover, she is attempting to circumvent the exclusive jurisdiction of this Court to determine whether she properly exercised an Initial Opt-Out by effectively seeking such a decision in state court. As a result, pursuant to Local Rule 7.1 (c), Wyeth requests that this Court grant Wyeth's Motion as uncontested.

Respectfully submitted,



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Attorneys for Defendant Wyeth

Dated: September 12, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS
(Phentermine/Fenfluramine/Dexfenfluramine)
PRODUCTS LIABILITY LITIGATION

MDL NO. 1203

SHEILA BROWN, *et al.*,

Plaintiffs,

v.

AMERICAN HOME PRODUCTS
CORPORATION,

Defendant.

CIVIL ACTION NO. 99-20593

**WYETH'S MEMORANDUM IN SUPPORT OF ITS MOTION TO GRANT AS
UNCONTESTED ITS MOTION TO ENFORCE THE SETTLEMENT
AGREEMENT AND PTO 1415 AGAINST GENEVIEVE HINKEL**

On April 23, 2003, Wyeth filed its Motion to Enforce the Settlement Agreement and Pretrial Order No. 1415 Against Class Member Genevieve Hinkel. On July 24, 2003, Wyeth filed a Supplement to its Motion. Although Plaintiff's response to the Motion was due well over three months ago, she has not responded. Moreover, she is attempting to circumvent the exclusive jurisdiction of this Court to determine whether she properly exercised an Initial Opt-Out by effectively seeking such a decision in state court. As a result, pursuant to Local Rule 7.1 (c), Wyeth requests that this Court grant Wyeth's Motion as uncontested.

FACTS

As set forth in Wyeth's Motion, in January 2003 Plaintiff voluntarily dismissed her Florida state court action against Wyeth and other defendants. A few months later, her new attorney filed a motion seeking to withdraw her voluntary dismissal. *See* Exhibit 15 to Wyeth's Motion. Her attorney claims that she is a valid Initial Opt-Out, and that her action should be reinstated because Wyeth's counsel misrepresented her Initial Opt-Out status to her previous attorney. But the only way in which Wyeth's counsel could have made a misrepresentation – and therefore, the only way that withdrawal of her dismissal would be appropriate – is if Plaintiff is in fact an Initial Opt-Out. According to the Claims Administrator's records, Plaintiff has not exercised an Initial Opt-Out.

Since Plaintiff is a *Brown* class member, her Initial Opt-Out status is a matter within the exclusive jurisdiction of this Court. *See* PTO 1415. Therefore, on April 23, 2003, Wyeth filed its Motion to Enforce the Settlement Agreement and Pretrial Order No. 1415 against the Plaintiff. On July 24, 2003, Wyeth filed a Supplement to its Motion. To this day, over four months after the filing of the Motion, Plaintiff has not responded.

On September 4, 2003, at a hearing on her motion to withdraw her voluntary dismissal in state court, Plaintiff's counsel argued that this Court has no authority to decide Plaintiff's Initial Opt-Out status because the Plaintiff has no case pending in the MDL. The hearing was adjourned without a ruling on the motion in order for the court to research a point of Florida state law.

ARGUMENT

Local Rule 7.1 (c) provides that “[i]n the absence of timely response, [a] motion may be granted as uncontested.” In this case, Plaintiff has not responded to Wyeth’s Motion filed over four months ago. Moreover, it does not appear a response is forthcoming. Rather than respond to Wyeth’s Motion in the proper forum, Plaintiff’s attorney has chosen to attempt to circumvent the exclusive jurisdiction of this Court by effectively litigating her Initial Opt-Out in state court. Plaintiff’s attorney represented to the state court that this Court does not have the authority to determine her Initial Opt-Out status. In light of all of the above, Wyeth requests that this Court grant Wyeth’s motion as uncontested.

Respectfully submitted,



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Attorneys for Defendant Wyeth

Dated: September 12, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Wyeth's Motion to Grant as Uncontested its Motion to Enforce the Settlement Agreement and PTO 1415 against Class Member Genevieve Hinkel was served this 12th day of September 2003 upon counsel of record in the *Genevieve Hinkel* action, who are listed below, in the manner indicated:

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and by U.S. first-class mail, postage prepaid, on all other counsel required to be served by
Pretrial Order No. 19.


Paul B. Kerrigan

Date: September 12, 2003